

**IN THE UNITED STATES DISTRICT COURT  
FOR THE THE DISTRICT OF NEW MEXICO**

CESAR CUBA GARCIA,

Plaintiff,

v.

No. CIV-07-0643 RB/WDS

VISTULA CURRY, et al.,

Defendants.

**ORDER GRANTING NON-MEDICAL DEFENDANTS'  
MOTIONS TO DISMISS**

**THIS MATTER** came before the Court on Defendant Walter Cooper's Motion to Dismiss (Document No. 54) as well as the Motion to Dismiss filed by Defendants Jodie Brown, Lilian Chumbley, Rudy Gonsales, Stanley Moya, Vistula Curry and Manuel Pacheco. [Doc. No. 58]. The moving Defendants are referred to hereafter, collectively, as the "non-medical Defendants."<sup>1</sup> In response to Defendants' motions, Plaintiff filed a brief in opposition. [Doc. No. 62] Plaintiff Cesar Cuba Garcia is proceeding *pro se* and has brought this civil right action under 42 U.S.C. §1983.

On July 9, 2007 the undersigned referred this matter to Magistrate Judge Schneider for a recommended disposition of the case. On September 17, 2009 Magistrate Judge Schneider filed his report and recommendations regarding the aforementioned motions, recommending that the Court treat the motions as motions for summary judgment and grant them on the ground that Plaintiff had not exhausted his administrative remedies, as required by 42 U.S.C. § 1997e(a). Plaintiff filed

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<sup>1</sup>The two remaining Defendants, Drs. Joseph and Brown, have not been identified, located, or served with process.

objections to the Magistrate Judges Report and Recommendations. [Document 76]. All moving Defendants except Walter Cooper filed a response to Plaintiff's objections. [Document 77].

Having reviewed the record de novo and considered the United States Magistrate Judge's Proposed Findings and Recommended Disposition and Plaintiff's objections thereto, and being otherwise fully advised, I find that the Motions for Summary Judgment should be granted.

**WHEREFORE, IT IS ORDERED** that the findings and recommendations of the United States Magistrate Judge are adopted.

**IT IS FURTHER ORDERED** that the non-medical Defendants' Motions to Dismiss (Docket No. 54 and 58) are deemed Motions for Summary Judgment are **GRANTED**. Plaintiff's complaint against the non-medical Defendants is dismissed without prejudice for failure to exhaust administrative remedies. The claims against Drs. Joseph and Brown are unaffected by this order.



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**ROBERT BRACK**  
**UNITED STATES DISTRICT JUDGE**